

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LITTON LOAN SERVICING, L.P.,

Plaintiff,

No. C 10-05478 PJH

v.

**ORDER GRANTING  
MOTION TO REMAND**

JESUS VILLEGAS,

Defendants.

Before this court is plaintiff's motion to remand this matter to Contra Costa County Superior Court. Having carefully read the parties' papers and considered the relevant legal authority, the court hereby rules as follows.<sup>1</sup>

**BACKGROUND**

This case stems from the purportedly unlawful detention of real property located 3111 Ursus Court, Antioch, California 94531 ("the Property"). Specifically, plaintiff Litton Loan Servicing LP ("Litton") alleges that defendant Jesus Villegas ("Villegas") is in possession of the Property without plaintiff's permission or consent. See Unlawful Detainer, Complaint at ¶ 2. Villegas had defaulted on his mortgage and the Property was sold to Litton on October 8, 2010, at a public foreclosure auction pursuant to a power of sale contained in a Deed of Trust, executed by Villegas, as trustor. See Unlawful Detainer, Exhibit A at ¶ 1, Complaint at ¶ 2.

Litton filed its complaint on October 27, 2010, in California Superior Court for the County of Contra Costa. The complaint alleges one cause of action. Litton alleges Villegas

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<sup>1</sup> This court finds the motion appropriate for decision without further oral argument, as permitted by Civil L.R. 7-1(b) and Fed. R. Civ. P. 78. See also Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir. 1991) (holding that the court's consideration of the moving and opposition papers is deemed an adequate substitute for a formal hearing), cert. denied, 503 U.S. 920 (1992). Accordingly, the January 26, 2011 hearing date is VACATED.

1 is unlawfully detaining the Property and that Litton is entitled to immediate possession of  
2 the Property. Villegas filed an answer to the unlawful detainer complaint on or about  
3 November 1, 2010.

4 On December 3, 2010, Villegas filed a notice of removal, alleging diversity  
5 jurisdiction and federal question jurisdiction.

6 Litton now moves for an order remanding the case to state court.

### 7 **DISCUSSION**

#### 8 A. Legal Standard

9 Federal subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) requires complete  
10 diversity of citizenship and an amount in controversy in excess of \$75,000. Federal subject  
11 matter jurisdiction under 28 U.S.C. § 1331 requires a civil action to arise under the  
12 constitution, laws, or treaties of the United States. If a defendant has improperly removed a  
13 case over which the federal court lacks subject matter jurisdiction, the federal court shall  
14 remand the case to state court. 28 U.S.C. § 1447(c). The removing party bears the burden  
15 of establishing that removal is proper. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195  
16 (9th Cir. 1998). There is a strong presumption in favor of remand. Sanchez v. Monumental  
17 Life Ins. Co., 102 F.3d 398, 403-04 (9th Cir. 1996).

#### 18 B. Legal Analysis

19 Litton's motion to remand is premised on two arguments: (1) federal question  
20 jurisdiction does not exist; and (2) there is no diversity jurisdiction because the amount in  
21 controversy does not exceed \$75,000. As to the former, Litton argues that an unlawful  
22 detainer claim is a state law claim based on state statutory procedures. As such, the claim  
23 does not necessitate interpretation of federal law and therefore there is no federal question  
24 jurisdiction. To the extent Villegas alleges that Litton violated various federal statutes (i.e.  
25 Federal Debt Collection Practices Act, Real Estate Settlement Procedures Act, civil rights  
26 statutes) and the constitution, these are merely affirmative defenses that may not be  
27 considered part of the pleadings for the purpose of determining whether a federal question  
28 exists. As to the latter, Litton points out that damages are expressly limited to less than

1 \$10,000 in this case, and no collection of any debt is involved. Thus, the amount in  
2 controversy is not satisfied.

3 1. Federal Question Jurisdiction

4 For this court to have federal question jurisdiction, plaintiff's case must arise under  
5 federal law. 28 U.S.C. § 1331. "A case 'arises under' federal law within the meaning of §  
6 1331 if 'a well-pleaded complaint establishes either that federal law creates the cause of  
7 action or that the plaintiff's right to relief necessarily depends on resolution of a substantial  
8 question of federal law.'" Proctor v. Vishay Intertechnology Inc., 584 F.3d 1208, 1219 (9th  
9 Cir. 2009) (quoting Empire Healthchoice Assurance, Inc. v. McVeigh, 547 U.S. 677, 689-90  
10 (2006)). Pursuant to the "well-pleaded complaint" rule, "the federal question on which  
11 jurisdiction is premised cannot be supplied via a defense; rather, the federal question must  
12 'be disclosed upon the face of the complaint, unaided by the answer.'" Provincial Gov't of  
13 Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1086 (9th Cir. 2009) (quoting Phillips  
14 Petroleum Co. v. Texaco, Inc., 415 U.S. 125, 127-28 (1974)).

15 Here, plaintiff's complaint is grounded in California state law. The complaint asserts  
16 only a single cause of action for unlawful detainer based upon California Code of Civil  
17 Procedure section 1161a. Further, plaintiff's right to relief on the unlawful detainer claim  
18 does not depend on the resolution of a substantial question of federal law. Rather, plaintiff  
19 is entitled to judgment upon establishing that the Property was sold in accordance with  
20 California Civil Code section 2924 and that the requisite three-day notice to quit to  
21 defendant was served as required in California Code of Civil Procedure section 1161a.  
22 Evans v. Superior Court, 67 Cal. App. 3d 162, 168 (1977). Accordingly, the complaint lacks  
23 any federal claims.

24 Defendant's answer, and thereby his asserted violations of federal law, should not  
25 be considered for purposes of determining federal question jurisdiction. Not only are they  
26 barred from consideration by the well-pleaded complaint rule, but because the scope of the  
27 unlawful detainer proceedings are limited, cross-complaints and counterclaims are not even  
28 allowed. Knowles v. Robinson, 60 Cal. 2d 620, 626-27 (1963). Due to the absence of a

1 federal claim or a substantial question of federal law, defendant Villegas has not met his  
2 burden of establishing federal question jurisdiction under 28 U.S.C. § 1331.

3 2. Diversity Jurisdiction

4 Federal district courts have jurisdiction over suits for more than \$75,000 where the  
5 citizenship of each plaintiff is different from that of each defendant. 28 U.S.C. § 1332.  
6 Here, since diversity of citizenship is satisfied – defendant is a citizen of California and  
7 plaintiff is a citizen of Delaware and/or Texas – the only issue as to diversity jurisdiction is  
8 thus whether defendant has shown by a preponderance of the evidence that the amount in  
9 controversy exceeds \$75,000. Sanchez, 102 F.3d at 404.

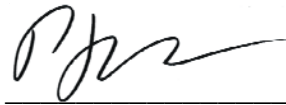
10 He has not. Plaintiff's complaint seeks less than \$10,000, as stated prominently on  
11 the face of the complaint. Unlawful Detainer, Complaint at ¶ 1. In unlawful detainer  
12 actions, moreover, the amount of damages sought in the complaint, not the value of the  
13 subject real property, determines the amount in controversy. Here, these damages are  
14 less than \$75,000. In unlawful detainer actions such as this one, California courts have  
15 noted that "the right to possession alone [is] involved" – not title to the property. Evans, 67  
16 Cal. App. 3d at 170 (quoting Cheney v. Trauzettel, 9 Cal. 2d 158, 159 (1937)) (holding that  
17 in unlawful detainer actions, title may only be litigated as to whether the purchaser at a  
18 trustee's sale acquired the title in compliance with Cal. Code Civ. Proc. 1161a and the deed  
19 of trust). Since this unlawful detainer cause of action is concerned only with the possession  
20 of the Property, damages are limited to those incident to the unlawful detention of said  
21 Property. In terms of such damages, plaintiff's complaint alleges damages for what it  
22 considers to be the reasonable value for the use and occupancy of the Property. Plaintiff  
23 seeks \$60 per day from expiration of the notice to vacate, October 19, 2010, through the  
24 date of which defendant relinquishes possession. Because these damages sought from  
25 the unlawful possession of the Property do not exceed \$75,000 (thus far, they would total  
26 approximately \$5,700), this Court lacks diversity jurisdiction under 28 U.S.C. § 1332.

**CONCLUSION**

In accordance with the foregoing, the court hereby GRANTS plaintiff's motion to remand.

**IT IS SO ORDERED.**

Dated: January 21, 2011



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PHYLLIS J. HAMILTON  
United States District Judge